

## Internal Revenue Service

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Department of the Treasury  
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Person To Contact:  
, ID No.

Telephone Number:

Refer Reply To:  
CC:PSI:B02  
PLR-129622-13  
Date:  
August 08, 2013

### Legend

X =

Y =

Z =

State =

Date 1 =

Date 2 =

Date 3 =

A =

Dear :

This responds to a letter dated June 20, 2013, and subsequent correspondence, submitted on behalf of X by its authorized representative, requesting a ruling under § 1362(f) of the Internal Revenue Code.

The information submitted states that X was formed in State on Date 1 and elected to be treated as an S corporation effective on its formation. On Date 2, a shareholder sold his shares to Y, a single member limited liability company treated as a disregarded entity, owned by A, an eligible shareholder. The executed purchase documents properly showed Y as the new shareholder. However, A erroneously

requested funds from Z and X shares were transferred to Z. Z is not an eligible shareholder of X. The parties represent that Y was the intended shareholder.

In Date 3, X learned of the termination of X's S corporation election due to the transfer of X shares to an ineligible shareholder for federal income tax purposes. In Date 3, Z transferred the X shares to Y.

X represents that X and each of its shareholders have filed consistently with the treatment of X as an S corporation since Date 1. X further represents that the inadvertent transfer of shares to Z rather than Y was not motivated by tax avoidance or retroactive tax planning. X and its shareholders have agreed to make any adjustments that the Commissioner may require, consistent with the treatment of X as an S corporation.

Section 1361(a)(1) of the Code provides that the term "S corporation" means, with respect to any taxable year, a small business corporation for which an election under § 1362(a) is in effect for such year.

Section 1361(b)(1)(B) provides that the term "small business corporation" means a domestic corporation which is not an ineligible corporation and which does not have as a shareholder a person (other than an estate, a trust described in § 1361(c)(2), or an organization described in § 1361(c)(6)) who is not an individual.

Section 1361(c)(2)(A)(i) provides that, for purposes of § 1361(b)(1)(B), a trust all of which is treated (under subpart E of part I of subchapter J of chapter 1) as owned by an individual who is a citizen or resident of the United States may be an S corporation shareholder.

Section 1362(d)(2) provides that (A) in general, an election under § 1362(a) shall be terminated whenever (at any time on or after the first day of the first taxable year for which the corporation is an S corporation) such corporation ceases to be a small business corporation, and (B) any termination under § 1362(d)(2) shall be effective on and after the date of cessation.

Section 1362(f) provides that if (1) an election under § 1362(a) by any corporation (A) was not effective for the taxable year for which made (determined without regard to § 1362(b)(2)) by reason of a failure to meet the requirements of § 1361(b) or to obtain shareholder consents, or (B) was terminated under § 1362(d)(2) or (3), (2) the Secretary determines that the circumstances resulting in the ineffectiveness or termination were inadvertent, (3) no later than a reasonable period of time after discovery of the circumstances resulting in the ineffectiveness or termination, steps were taken (A) so that the corporation is a small business corporation, or (B) to acquire the shareholder consents, and (4) the corporation and each person who was a shareholder of the corporation at any time during the period specified pursuant to § 1362(f), agrees to make such adjustments (consistent with the treatment of the

corporation as an S corporation) as may be required by the Secretary with respect to such period, then, notwithstanding the circumstances resulting in the ineffectiveness or termination, the corporation will be treated as an S corporation during the period specified by the Secretary.

Based solely on the facts submitted and the representations made, we conclude that X's election to be treated as an S corporation was terminated on Date 2 and that this termination was inadvertent within the meaning of § 1362(f). We further conclude that, pursuant to the provisions of § 1362(f), X will continue to be treated as being an S corporation from Date 2 and thereafter, provided that X is otherwise eligible to be an S corporation and provided that the election was not otherwise terminated under § 1362(d).

Except as specifically ruled above, we express no opinion concerning the federal tax consequences of the transactions described above under any other provisions of the Code. Specifically, we express no opinion regarding X's eligibility to be an S corporation.

This ruling is directed only to the taxpayer that requested it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

Sincerely,

Charlotte Chyr  
Senior Technician Reviewer, Branch 2  
Office of the Associate Chief Counsel  
(Passthroughs & Special Industries)

cc: